

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

**PLAINTIFF'S MOTION FOR LEAVE TO FILE SUR-REPLY TO BEST BUY
STORES, LP'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED
COMPLAINT**

COMES NOW Plaintiff, John Birdno (“Plaintiff”), by and through his undersigned counsel, and for his Motion for Leave to File Sur-Reply to Best Buy Stores, LP’s Motion to Dismiss Plaintiff’s First Amended Complaint, states as follows:

1. Defendant filed the instant Motion to Dismiss alleging that Plaintiff John Birdno was not the real party in interest under Rule 17 and alternatively alleging that John Birdno's insurer is a necessary party under Rule 19.

2. Defendant failed to cite to a single case in its Motion to Dismiss.

3. In its Reply Brief, Defendant, for the first time, claimed that Plaintiff's insurer was a necessary party under Rule 19 because such matters were procedural and differed from state substantive law. Defendant misconstrued a number of cases from other jurisdictions to support its position in its Reply Brief.

4. In order to respond to the new issues raised by Defendant and to fully brief the issues raised in Defendant's Reply Brief for the Court, plaintiff respectfully requests leave to file a Sur-Reply.

5. Defendant will not be prejudiced if leave is so granted.

PLAINTIFF RESPECTFULLY REQUESTS AN ORAL ARGUMENT ON DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT PURSUANT TO LOCAL RULE 7.0(g).

WHEREFORE, Plaintiff Requests an Order, granting its Motion for Leave to File a Sur-Reply to Defendant's Motion to Dismiss First Amended Complaint and for any further relief this Court deems just and proper under the circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served via U.S. Mail and/or electronic filing, this 15th day of October, 2013 to: Beth Boggs, Attorney for Defendant, 7912 Bonhomme Ave., Ste. 400, St. Louis, MO 63105.

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/s/ Richard D. Gerber